HON'BLE MR JUSTICE A. GOPAL REDDY

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WRIT PETITION NO.2439 OF 1994 &

WRIT PETITION NO.786 OF 2005

DATE:17.02.2006

WRIT PETITION NO.2439 OF 1994

Between:

N. Jaya Krishna, S/o. N.T. Ramarao,

Proprietor of Sri Ramakrishna Theatre.

..... PETITIONER

AND

The Government of A.P. rep. by its

Chief Secretary, Hyderabad & four others.

.....RESPONDENTS

WRIT PETITION NO.786 OF 2005

Between:

M/s.J.K.Trades, Ramakrishna 70MM Theatre,

Rep. by its Proprietor N. JayaKrishna.

..... PETITIONER

AND

The Managing Director, APCPDCL,

Singareni Bhavan, Red Hills, Hyderabad

And three others.

.....RESPONDENTS

HON'BLE MR JUSTICE A. GOPAL REDDY

WRIT PETITION NO.2439 OF 1994 &

WRIT PETITION NO.786 OF 2005

COMMON ORDER:

Since the issue involved in both the writ petitions is common and as the parties are one and the same, they are being disposed of by this common order.

W.P.No.2439 of 1994

The petitioner, who is availing power supply for screening movies in his theatre namely; Ramakrishna 70MM under HT Service Connection No.HDS-065 from the second respondent-A.P. State Electricity Board, presently known as A.P. Central Power Distribution Company Limited (for short 'the Board'), filed this writ petition for issuance of a writ of Mandamus directing the respondents to forthwith compensate the petitioner with interest thereon. But, in the affidavit filed in support of the writ petition, at para 19, the following prayer is sought for.

"In the circumstances it is just and necessary that this Hon'ble Court may be pleased

to issue an appropriate Writ, order or directions, preferably in the nature of Writ of Mandamus, directing the Electricity Board to continue to supply the Electric power by Electricity Board as per the H.T. Service to J.K. Traders i.e. Ramakrishna 70MM Theater-Account No.Hyderabad 065 ……."

In addition to that, it was also prayed that pending the writ petition, to direct the respondents not to demand and collect any sums under Account No.Hyd.065 of Ramakrishna Theatre 70MM, pursuant to the letter issued by the fourth respondent, dated 21.12.1993.

The chequered events that are necessary for disposal of this Writ Petition may be stated as follows:

Following the assassination of Prime Minister late Sri Rajiv Gandhi in Tamilnadu on the night of 21.5.1991, widespread incidents of violence involving destruction of property occurred in several places in Andhra Pradesh. In the process, the properties belonging to the citizens including the political persons were badly damaged. State Government appointed a Commission of Inquiry consisting of a single member namely Justice M.R.A. Ansari, retired Chief Justice of Jammu & Kashmir High Court, through G.O.Ms.No.511, General Administration (Genl.B) Department, dated 22.8.1991 to find out the circumstances that led to violence and damage to private/public properties in different parts of the State after the assassination of Sri Rajiv Gandhi, etc. Said commission enquired into the matter and submitted its report to the Government on 19.6.1992.

The theatre of the petitioner, as per the certificate issued by the District Collector, Hyderabad dated 12.11.1991, was badly damaged to a tune of Rs.1.57 crore. The State Government, through G.O.Ms.No.375, dated 30.5.1991 appointed another official committee headed by Swarajit Ray, I.A.S. Officer to assess and evaluate the loss occurred to the property (private and public) in the State. The said committee submitted its report on 17.7.1991, but has not recommended any compensation for the loss occurred by the bigger establishments on the ground that the insurance companies should take care of the matter. Since the theatre of the petitioner was insured with the United India Insurance Company, the company surveyor conducted the survey and submitted his report on 10.1.1992 and the company was considering the claim of the petitioner at Rs.2.74 crore. While so, late N.T.Rama Rao filed Writ Petition (Civil) No.167 of 1993 before the Supreme Court, in which, the Apex Court

called upon the State Government to file an affidavit as to the action taken including that of charge sheet, if any filed and disciplinary proceedings initiated against the officer, who failed to perform the duty in curbing the violence.

Be that as it may, the state Government after examining the report of Swarajit Ray committee, dated 17.7.1991, through G.O.Ms.No.497, dated 12.8.1991 granted certain reliefs to the business establishments including the theatres that were damaged in the violence, such as waiver of sales tax, excise duty for the period for which the establishments remained closed due to damage, etc. Through G.O.Ms.No.1509, dated 1.10.1991 the State Government issued further orders for implementing the reliefs and rehabilitation measures issued in G.O.Ms.No.497. In terms of the said G.Os., through Memo No.110647/CT.III(2)/91, dated 7.3.1992, the State Government also sanctioned loan to a tune of Rs.20,00,000/- to the petitioner as interest free margin money. Thereafter, the petitioner approached this Court by filing W.P.No.15050 of 1993 seeking compensatory relief through writ of mandamus after declaring that the Government failed to protect the property of the petitioner and to award appropriate compensation on the basis of the report of the commission of inquiry constituted by the state Government, as referred to above. In the meanwhile, the second respondent-Board through its letter, dated 22.12.1993 demanded the petitioner to pay a sum of Rs.11,22,903/- towards the outstanding dues for the actual consumption charges for the periods May, 1991, March 1992 to November, 1993. Challenging the said demand, the present writ petition is filed and at para 17 of the affidavit, the petitioner pleaded as under:

"…….the petitioner has no intention of avoiding amounts due for the power consumed but wants and request under the peculiar circumstances that a maritorium of payment of Electricity charges for one year i.e. till1.1.1995 is granted, so that he can keep up his undertaking of paying these dues either out of the insurance claim or out of the compensation payable to me by the state. The refusal of Government to give necessary relief by memorandum in June, 1993 is unreasonable, irrational and arbitrary."

The petitioner in WPMP No.2034 of 1994 obtained stay of the impugned demand notice.

W.P.No.786 of 2005

On dismissal of the above writ petition for default on 21.4.2002, the Superintending

Engineer (Operations)-second respondent in W.P.No.786 of 2005 issued a demand notice on 30.6.2004 calling upon the petitioner to pay a sum of Rs.49,76,665/- due under various heads (including the amount covered by W.P.No.2439 of 1994) for which, the petitioner submitted reply on 2.7.2004 stating that he has taken steps for restoration of writ petition No.2439 of 1994 and further stated that the charges of Rs.5,19,642/- claimed towards belated payment of C.C. bills of June, 1997, September, 1997 and November, 1997 were already paid through cheque No.585935, dated 19.11.1997. After considering the said reply, the respondent-Board through its letter, dated 15.7.2004 informed the petitioner that after giving due credit of the amount paid under the said cheque, the petitioner has to pay the balance amount to a tune of Rs.6,09,002/- (excluding the amount covered in W.P.No.2439 of 1994) and directed the petitioner to make payment within seven days without fail to avoid disconnection, treating the same as final notice. Ultimately, the respondent-Board by its letter, dated 14.11.1997 called upon the petitioner to pay the undisputed amount of Rs.14,48,825/-. Aggrieved by that, the petitioner filed W.P.No.786 of 2005 complaining that though W.P.No.2439 of 1994 is restored to its file, the respondent-Board is threatening to disconnect the power connection to his theatre and the demand made by the respondent-Board is contrary to Sections 43, 44 and 56 of the Electricity Act, 2003 apart from seeking a direction to the respondents not to take any action against him with regard to the claim of Rs.5,19,642/- along with Rs.92,323/- by way of low power factor surcharge.

The respondent-Board filed separate counter affidavits in W.P.No.2439 of 1994 as well as in W.P.No.786 of 2005. The respondent-Board raised a preliminary objection in W.P.No.786 of 2005 stating that in the absence of any violation of constitutional or statutory right of the petitioner, the writ petition cannot be maintainable and hence, the same is liable to be dismissed. It was pleaded that as the petitioner could not use the power supply for screening cinema due to the damage and in view of his representation, the respondent-Board exempted the petitioner from payment of monthly minimum charges i.e. charges payable as per agreement even if the petitioner fails to use the power for whatsoever reasons, from 22.5.1991 to 21.5.1992. For that period, the respondent-Board collected the meter rent of Rs.375/- per month as against the monthly minimum charges of Rs.25,000/- to 30,000/-. The said exemption was granted for a period of one year initially and on the condition that in the event of petitioner starts screening cinema before that period then the

regular consumption charges shall be payable. Though the petitioner resumed his regular business of screening cinema from 8.5.1992, did not pay the regular consumption charges and therefore, the petitioner fell due an amount of Rs.35,20,873/- and subsequently he paid these amounts in instalments by excluding an amount of Rs.11,22,903/-, which is the total amount due for the months of April, 1991, March 1992 to November, 1993 and the same is the subject matter of W.P.No.2439 of 1994. The petitioner started paying bills from December 1993 to June 1996 after three years i.e. he paid the amounts after deducting the amounts to be paid towards surcharge for the belated payments for the above months. It was pleaded that the petitioner is aware of the fact that the amount of Rs.5,19,642/- has been levied for the delayed payment and through his letter dated 3.4.2000 the petitioner also requested the department to waive the said amount. The actual amount that was liable to pay by the petitioner comes to Rs.5,39,856/- towards the surcharge and an amount of Rs.6,083/- towards fuel cost adjustment for the month of September 1997, which comes to a total amount of Rs.5,45,939/- and an amount of Rs.26,297/- miscellaneous credit was given to the account and after deducting the above amount from the total amount of Rs.5,45,939/-, the petitioner was required to pay the amount of Rs.5,19,662. In view of the same, the respondent-Board prayed for dismissal of the writ petitions.

Heard the learned counsel for the petitioner as well as the learned Standing Counsel for the respondent-Board and considered the material on record.

It is pertinent to note that pending W.P.No.2439 of 1994, the earlier Writ Petition filed by the petitioner i.e. W.P.No.15050 of 1993 claiming compensation from the state for the damage caused to his theatre, has been disposed of by this Court on 28.8.2000 awarding compensation of Rs.1 (one) crore for the damages suffered by the petitioner (see 2000 (6) ALD 17). Questioning the correctness of the said judgment, State preferred an appeal in W.A.No.1407 of 2000, which is now said to be pending.

Learned counsel for the petitioner submits that when the petitioner made a representation to the first respondent-State Government on 28.11.1992 requesting for waiving the slab tax and electricity charges for at least two years, the Government through its letter, dated 21.6.1993 rejected the request of the petitioner without giving any reasons and therefore, the same is liable to be set aside. The State Government

under Section 78-A of the Electricity (Supply) Act, 1948 failed to issue necessary directions to the respondent-Board for waiving of the interest and as the petitioner did not receive any compensation from the insurance company, the respondent-Board cannot collect the consumption charges. Since the District Collector, Hyderabad in his report dated 12.11.1991, certified that the petitioner suffered loss to a tune of Rs.1.57 crore, the State Government is under obligation to compensate the petitioner. In view of the same, it is contended that until the necessary compensation is paid, the respondent-Board should be restrained from collecting the consumption charges. On dismissal of W.P.No.2439 of 1994, which is later restored to its file by order dated 9.12.2004, the respondent-Board raised the demand in its notice dated 30.6.2004 for payment of the amount covered by W.P.No.2439 of 1994 and the belated charges, which is barred by limitation under Section 56(2) of the Electricity Act, 2003 since the amounts were due as on 14.11.1997, they cannot recover the same after the lapse of two years. Further, he contends that under the cheque referred to above, the petitioner paid a sum of Rs.8,97,000/- which, includes the belated charges of Rs.5,19,000/-, and therefore, again showing the same as due under the demand notice, dated 30.6.2004 is illegal.

Sri N. Subba Reddy, counsel for the respondent-Board, on the other hand, contends that the respondent-Board taking into consideration of the loss suffered by the petitioner, has already given sufficient exemptions to the petitioner and only metre rent was charged for the period from June, 1991 to April 1992 as against the monthly minimum charges of Rs.25,000/- to 30,000/-. The petitioner paid all the amounts upto February, 1992 but failed to pay the metre rents for the months March and April 1992 apart from the amount of Rs.48,640/- payable under the bill for the month of May, 1991, which was prior to the damage caused to the theatre of the petitioner. All the amounts, now due and challenged by the petitioner in both the writ petitions are actual consumption charges and late payment surcharge plus Low Power Factor Surcharge when the theatre went into commercial exhibition i.e. the bills from the month of May, 1992 to till date. Since the Andhra Pradesh State Electricity Board is a statutory Corporation, there is no statutory obligation on its part to waive the power consumption charges, as claimed by the petitioner, and hence no mandamus can lie against the Board for waiver. He further contends that though the petitioner admitted about the due amount of Rs.5,00,000/- towards late payment charges, went on making representations to the State Government from time to time and the said amount was also mentioned in the subsequent demands made by the Board and

therefore, it is not open for the petitioner to contend that the demand for payment of amounts mentioned in the notice dated 30.6.2004 is barred by limitation.

As observed above, the main prayer sought for in W.P.No.2439 of 1994 is a different one with that of the prayer sought for in the affidavit and a reading of the affidavit clearly discloses joinder of several causes of action, to which, the second respondent-Board is nothing to do. Be that as it may, the State Government after taking into consideration of the report submitted by the two commissions, as referred to above, issued G.O.Ms.No.497, dated 12.8.1991 followed by G.O.Ms.No.1519, dated 1.10.1991 through which, certain concessions were granted to the persons whose properties were damaged in the violence and by virtue of the said G.Os. the petitioner was also extended certain concessions such as exemption of sales tax, entertainment tax etc. In the said G.Os. it was categorically mentioned that the sales tax/Entertainment tax shall be waived for the period during which the establishments/theatres remained closed due to damage, but the State Government has not extended any benefits exempting the establishments/theatres from payment of power consumption charges. In W.P.No.15050 of 1993, the petitioner was sufficiently compensated for the damages suffered by him and the State Government was directed to pay the compensation of Rs.1 (one) crore. Once the consumer fails to pay the power consumption charges in-time as per the agreement entered into with the respondent-Board, he is liable to pay the belated payment surcharge. Admittedly, the petitioner failed to pay the power consumption charges but went on making representations to the State Government, which were eventually, rejected. Mere making representations to the State Government for waiving of the power charges, does not absolve the petitioner from the liability of payment of consumption charges or the belated payments' surcharge. As observed above, the prayer in W.P.No.2439 of 1994 and in the prayer in the affidavit filed in support of the petition are different, and the interim relief sought for by the petitioner to stay the demand notice is not consequential to the main prayer in the writ petition. In the absence of any statutory power vested in the respondent-Board for waiving the power consumption charges, the petitioner cannot seek a mandamus nor is entitled to any relief as claimed in the writ petition.

Coming to the dispute in W.P.No.786 of 2005, the only contention of the petitioner appears to be that the respondent-Board cannot claim for the amount of Rs.5,81,774/- as demanded in its notice dated 14.11.1997 towards the amount due

as on November, 1997 after lapse of five years in view of sub-section (2) of Section 56 of the Electricity Act, 2003. It is not in dispute that pursuant to the demand made on 14.11.1997, the petitioner submitted a representation on 30.1.2000 requesting the respondent-Board to waive the penalty and surcharge as he has not received the insurance claim, which request has been rejected by the Board and after a prolonged representations, the Board in its letter, dated 5.2.2003, called upon the petitioner to pay the C.C. bill including the Low Power Factor surcharge, which can be examined and ultimately if he was declared to be not entitled for any benefit, he is liable to pay additional charges for the belated payments. The Electricity Act, 2003 came into force only on 10.6.2003. The respondent-Board in its demand notices dated 5.3.2004 and 17.6.2004 insisted the petitioner for payment of arrears of Rs.5,19,642/- towards belated payment charges for the months of June, 1997, September, 1997 and November 1997. Therefore, it is clear that on the date when the Act came into force, there was a demand by the respondent-Board. Sub-Section (2) of Section 56 does not have retrospective operation nor will wipe out the liability of the petitioner on the date of the act and hence, the petitioner cannot escape from the liability of payment of arrears due to the respondent-Board. If any amount is due on the date of the commencement of the Act and if no action is taken even after two years on the enforcement of the said Act, in such a situation, the respondent-Board cannot recover the said amount. But, the same is not the case on hand, on the other hand, the respondent-Board continuously demanded and called upon the petitioner to pay the amount due, for which, the petitioner went on making representations to waive the said amount. In view of the same, the submission of the learned counsel for the petitioner that the respondent-Board cannot recover Rs.5,19,642/- as the same is barred by limitation, is devoid of any substance and is accordingly rejected. If any amounts paid by the petitioner have not been duly credited, the proper remedy for the petitioner, if any, is to raise a dispute before the appropriate forum for resolving the said dispute, but the same cannot be gone into in the writ petition.

For the forgoing reasons, both the writ petitions fail and are accordingly dismissed with costs quantified at Rs.5,000/- in each.

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A. GOPAL REDDY, J

17th FEBRUARY, 2006.

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